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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 11 of 1999
-o-

1. K. Balaraman
2. Muthukrishnan
3. Saradha
4. Sakunthala
5. Ranga
6. Suseel a
7. Ankammal
8. Maina .. Appellants

Versus

1. Pattammal
2. Nalini
3. Pushpalatha
4. M. Jayanthi
5. Rosy
6. Purusothaman
7. Sangeetha .. Respondents

Second appeal under Section 100 CPC against the decree and judgment dated 01.09.1998 made in A.S. No. 67 of 1996 on the file of Subordinate Judge, Thiruvallur confirming the decree and judgment dated 18.06.1996 made in O.S. No. 874 of 1988 on the file of District Munsif, Thiruvallur.

For Appellants : Mr. C.P. Ramkumar
for J.R.K.Bhavanandam
For Respondents : Mr. A. Palaniappan

JUDGMENT

The defendants 1, 3, 5 to 10 in O.S. No. 874 of 1988 before the District Munsif Court, Thiruvallur are the appellants in the second appeal. The said suit was filed by respondents herein for specific performance of the agreement dated 20.08.1980 and for permanent injunction. The trial court decreed the suit and on appeal, the first appellate court confirmed the decree and judgment of the trial court, hence, the present second appeal has been filed.

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2. For the sake of convenience, the parties shall be referred to as they were arrayed before the trial court.

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3. The case of the plaintiffs as set out in the plaint are as follows:-

The first defendant is the absolute owner of the suit property, entered into an agreement, Ex.A1 dated 20.08.1980 with the first plaintiff for total sale consideration of Rs.9,060/- and on that day entire amount was paid. In and by the said agreement, Ex.A1, the first defendant agreed to execute the sale deed forthwith on request made by the first plaintiff and there is no time stipulated for performance of the contract. It is also stated that after execution of Ex.A1, the plaintiffs were put in possession of the suit property and they were paying kist to the revenue authorities till 1988. During 1988, the first plaintiff requested the first defendant to execute the sale deed in his favour; that the first defendant told the first plaintiff to prepare the sale deed and wait at the Sub-registrar Office, Perambakkam on 09.08.1988, accordingly, the first plaintiff purchased stamp papers to the value of Rs.2,542/-, prepared sale deed and went to the Sub-registrar Office, Perambakkam and waited there till 5.00 p.m. but the first defendant did not turn up; that the plaintiffs went to the residence of the first defendant and requested him to sign the sale deed and register it, but the first defendant evaded. Thereafter, a panchayat was convened in the presence Munusamy, PW2; Jayarama Reddy, PW3 and Murugesan, PW4, but the first defendant refused to execute the sale deed, hence, the first plaintiff sent a legal notice, Ex.A6 dated 22.09.1988 calling upon the first defendant to execute the sale deed, for which the first defendant sent a reply notice, Ex.A7 dated 01.10.1988 thereby refused to execute the sale deed on false reasons. On 06.12.1988, the defendants attempted to cut and carry away the Velikathan trees standing in the suit property, which was prevented by the plaintiffs, hence, the suit was filed.

4. The defendants have filed written statement contending that the first plaintiff is his family friend; that except the suit property, the defendants did not own any other property and therefore there is no necessity for them to sell the same to the first plaintiff; that the first plaintiff was employed as Village Munsif and the second defendant was the Village Headman; that the first plaintiff was removed from service and in order to reinstate him in service, his higher authorities insisted to furnish immovable property in his name, hence, he requested the first defendant to execute a sale agreement in respect of the suit property and considering the close friendship, the first defendant signed Ex.A1; that on the date of execution of Ex.A1, the first plaintiff also gave a letter stating the above facts; that the averment that possession was handed over to the plaintiffs is false; that the first defendant has not received any amount as alleged; that the patta in respect of the suit property stand in the name of the third defendant; that the defendants never interfered with the possession of the plaintiffs, in other words, the suit property was never in the possession of the plaintiffs and prayed for dismissal of the suit.

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5. Before the trial court, the plaintiffs have marked Ex.A1 to A11 and Pattammal, the second plaintiff was examined as PW1, Munusamy, Jayarama Reddy and Murugesan were examined as PWs 2 to 4 respectively. On the side of the defendants, Exs. B1 to B9 were marked and the first defendant was examined as DW1, Dass, Srinivasan and Manickavel were examined as DWs 2 to 4 respectively.

6. The trial court after careful consideration of the oral and documentary evidence found that the first defendant had admitted the execution of Ex.A1, sale agreement, however denied that he did not receive any amount as advance; that when the first defendant admitted the execution of Ex.A1, the burden lies on him to prove that it is sham and nominal, but not proved; that the first plaintiff is in possession of the suit property ever since the execution of Ex.A1 and paid kists under Ex.A2 to A4 series; that if really Ex.A1 was executed by first defendant for reinstating the first plaintiff, he could have cancelled the said agreement; that till notice, Ex.A6 is received, the first defendant has not taken any steps to cancel it; that if Ex.A1 is sham and nominal, the first plaintiff ought to have obtained the sale deed on the date of execution of Ex.A1 itself and he ought not to have waited for eight years; that the first plaintiff prepared sale deed in necessary stamp papers, which is evident from Ex.A5 dated 09.08.1988; that it is proved that the plaintiff and PW3 went to the house of first defendant and enquired why he did not turn up, for which, the first defendant promised to come and register the sale deed within one week; that the first defendant not disputed the above said facts; that the defendants admitted that they have not paid kist to the suit property from 1980 till 1988 whereas the first plaintiff paid the kist for the entire period; that the plea of first defendant was that Ex.B8 was executed by the first plaintiff on the date of execution of Ex.A1 stating that he would return Ex.A1 after showing it to his higher officials and he would not go for civil or criminal cases based on Ex.A1; that the defendants contended that the said letter, Ex.B8 was signed by the first plaintiff and DWs 2 and 3 attested it, hence, in view of the said letter, the first defendant need not execute the sale deed, but DW2 admitted in his evidence that he involved in a prohibition case and paid fine, hence, his evidence is not trustworthy; that DW3 admitted in the cross-examination that the date in Ex.B8 is corrected from '27th' to '20th' twice in two places, hence, Ex.B8 is unreliable; that the contents of Ex.B8 appears that they were written after obtaining the signature of first plaintiff, hence, it creates suspicion that it was filled up in a white paper where the signature of the first plaintiff was available; that the first defendant sent Ex.A7, reply notice dated 01.10.1988 wherein Ex.B8 was not at all whispered, hence, it should have been created later for the case; that the plea of limitation does not arise in this case, since, there is no time limit prescribed in Ex.A1, that the defence of the defendants that the first plaintiff has no means to purchase the suit property since he is residing in a residential house and struggling for his day-to-day expenses is concerned, the trial court found that the first plaintiff was allotted a share of

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3 acres out of 12 acres by partition at Kunnavalam village; that Ex.A9 patta stand in his name; that the first plaintiff also owns 5 acres of land at Pattari Perumbudur Village, the title deed, Ex.A10 stands in his name; that apart the first plaintiff is owning 2 ½ acres of land in Nemili Village and patta relating to the said land is Ex.A11; that he sold 1 ½ acres of land in Nemili Village for Rs.1,75,000/- and conducted the marriage of his daughters; that DW1 in his evidence also admitted that first plaintiff owns lands in Nemili Village. It is further pointed out by the trial court that Ex.A1 came into existence in the year 1980, at that time, the first plaintiff was placed under suspension, later, in the year 1982, he was terminated from service, which is also known to the first defendant, but till 1988, he has not taken any steps to cancel Ex.A1; that the puberty function invitation, Ex.A8 held in the year 1988 was sent to the first plaintiff by the first defendant, if really relationship was not cordial he would not have sent it. Considering the above facts, the trial court came to the conclusion that Ex.A1 is not sham and nominal. In Ex.A1, it is found mentioned that the entire sale consideration of Rs.9,060/- was paid on the very same day and possession was also delivered to the first plaintiff; that the first plaintiff died, thereafter, his wife, PW1 succeeded to his estate and cultivated the lands, later, due to water scarcity, she could not continue her agriculture operations, with the result, Velikathan plants grown up, which was appropriated by her twice prior to the filing of the suit; that it was admitted by first defendant in his evidence that Velikathan trees were appropriated by PW1 by using the interim order granted by the trial court. Considering the oral and documentary evidence, it came to the conclusion that the possession also delivered to the plaintiffs, hence, the plaintiffs are entitled to the relief of specific performance and permanent injunction and decreed the suit.

7. Aggrieved by the decree and judgment of the trial court, the defendants have filed A.S. No. 67 of 1996 before the Sub-court, Thiruvallur and the first appellate Court after consideration of the oral and documentary evidence confirmed the decree and judgment of the trial court.

8. The learned counsel appearing for the appellants canvassed that Ex.A1, agreement is an unregistered document, hence, it is inadmissible in law; that the possession of the suit property was with the first defendant; that the suit is barred by limitation since the agreement was entered into on 20.08.1980 and the suit was filed in the year 1988; that the courts below failed to consider Ex.B2 to B7, kist receipts to prove the possession of the first defendant; that Ex.B9, reconveyance was not at all taken into account and prayed for setting aside the decree and judgment of the courts below.

9. Per contra, the learned counsel for the respondents submitted that the courts below are right in coming to the conclusion that Ex.A1, agreement of sale was genuine; that Ex.B8, letter alleged to have been executed by the first plaintiff was not proved by the defendants; that the documentary evidence filed by

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the plaintiffs namely Exs. A1 to A5, kist receipts prove that they are in possession of the suit property from the date of execution of Ex.A1, sale agreement and the same was rightly appreciated by the courts below and therefore interference of this Court is not warranted and prayed for dismissal of the second appeal.

10. The courts below concurrently found that the first plaintiff was in possession of the suit property pursuant to Ex.A1 considering Exs. A2 to A4 series and oral evidence.

11. It is argued by the learned counsel for the appellants that Ex.A1 is a unregistered document, which is inadmissible in law, hence, the courts below ought not to have relied upon it. Section 49 of the Indian Registration Act contemplates "provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1852 or as evidence of any collateral transaction not required to be effected by registered instrument."

12. The substance of the said proviso is that any unregistered document, required by law to be registered, may be received as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1852. In this case, the first plaintiff has invoked Section 53-A of Transfer of Property Act and the courts below on assessment of evidence arrived at a conclusion that the first plaintiff has performed his part. Section 53-A of the Transfer of Property Act runs as follows:-

> "Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming

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under him any right in respect of the property of which the transferee has a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

13. In this context, it is relevant to refer to the decision of the Honourable Supreme Court reported in (Maneklal Mansukhbhai v. Hormusji Jamshedji Ginwalla & Sons) *AIR 1950 SC 1* wherein in Para-17 it was held thus:-

"17. The section is a partial importation in the statute law of India of the English doctrine of part-performance. It furnishes a statutory defence to a person who has no registered title deed in his favour to maintain his possession if he can prove a written and signed contract in his favour and some action on his part in part-performance of that contract. In order to find whether the defendant in the present case has satisfied the conditions of the section, it has to be held proved that the Talukdari Settlement Officer contracted to give a lease of the survey numbers in suit to Manilal Maganlal by a writing signed by him and that from this writing the terms of the tenancy can be ascertained with reasonable certainty. It has further to be held established that the transferee took possession of the property or did any acts in furtherance of the contract. It may be mentioned that in cases of lease the legislature has recognized that the equity of part performance is an active equity as in English law and is sufficient to support an independent action by the plaintiff. (Vide Section 27-A of the Specific Relief Act). This section however applies to contracts executed after 1st April, 1930, and has no application in the present case; but there can be no manner of doubt that the defence under Section 53-A is available to a person who has an agreement of lease in his favour though no lease has been executed and registered. We are satisfied that the defendant has fulfilled both the conditions necessary to attract the application of the section in the present case...."

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14. It is evident that where any person contracts to transfer for consideration any immovable property by writing signed by him and in part performance of the contract the transferee has taken

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possession of the property and continues in possession, then notwithstanding that the contract which was required to be registered has not been registered, the transferor is precluded from enforcing against the transferee any right in respect of that property other than the right expressly provided by the terms of the contract. Hence, the argument of the learned counsel for the appellants that Ex.A1 is inadmissible in law is rejected for the reasons mentioned supra.

15. It is argued by the learned counsel for the appellants that the suit is barred by limitation. The parties have entered into an agreement, Ex.A1 on 20.08.1980 wherein, admittedly, there is no specific date fixed for performance of the contract, the limitation starts from the date when the plaintiff has notice that the performance is refused as contemplated under Article 54. In this case, the first defendant refused to execute the sale deed only through his reply notice, Ex.A7 dated 01.10.1988 and the suit was filed by the plaintiffs on 01.12.1988, hence, the suit is in time.

16. In the decision (Gunwanthbhai Mulchand Shah and others vs. Anton Ellis Farel and others) 2006 AIR SCW 1377, in para-7, the Hon'ble Supreme held thus:-

> "7. ...It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the Court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in *R.K. Parvatheraj Gupta vs. K.C. Jayadeva Reddy (2006 (2) SCALE 156)*. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement."

17. One another argument of the learned counsel for the appellants is that the courts below failed to properly appreciate Ex.B8, the letter executed by the first plaintiff to first defendant, wherein, the circumstances under which Ex.A1 was executed is clearly mentioned i.e., to reinstate the first plaintiff in employment, he sought a title deed, considering the friendship, the

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first defendant executed it, hence, Ex.A1 is sham and nominal. The said argument was rejected by the courts below since, pursuant to Ex.A1, possession was delivered to the plaintiffs, necessary taxes and charges were paid by the plaintiffs to the concerned authorities, besides, there were corrections in dates and in Ex.A7, reply notice, Ex.B8 was not at all whispered and if really Ex.B8 came into existence on the date of Ex.A1, the appellants ought to have cancelled Ex.A1 immediately, whereas, even after lapse of 8 years, they have not chosen to cancel it, hence, the findings of the courts below in this aspect is perfectly valid.

18. In view of the above discussion, the judgment and decree of the courts below are confirmed. The second appeal is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Subordinate Judge
   Sub-Court
   Thiruvallur

2. The District Munsif
   District Munsif Court
   Thiruvallur

3. The Section Officer
   Vernacular Records Section
   High Court of Madras
   Madras - 600 104

1 cc to Mr.J.R.K.Bhavanantham, Advocate, SR.20523
1 cc to Mr.A.Palaniappan, Advocate, SR.19588

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Pre-delivery Judgment
in S.A. No. 11 of 1999

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